

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ALONZO SMITH,

Plaintiff,

v.

**FORMER CHICAGO POLICE
DEPARTMENT COMMANDER
JON BURGE, ET AL.,**

Defendants.

No. 16 C 3404

The Honorable Amy J. St. Eve

Magistrate Judge Mary M. Rowland

**CITY DEFENDANTS' JOINT MOTION TO STRIKE
PARAGRAPHS 2 THROUGH 5 OF PLAINTIFF'S NOTICE OF ACCEPTANCE**

Now come Defendants City of Chicago, Jon Burge, John Byrne, Peter Dignan, Leroy Martin, Terry Hillard, Richard M. Daley, Thomas Needham, and Gayle Shines (collectively "Defendants"), by and through their counsel of record, and respectfully move this Court to strike Paragraphs 2-5 of Plaintiff's Notice of Acceptance of Cook County's Offer of Judgment [Dkt. No. 247] ("Notice of Acceptance"). In support of said Motion, Defendants state as follows:

1. Plaintiff Alonzo Smith ("Plaintiff") filed the Notice of Acceptance on November 27, 2018, relating to Plaintiff's acceptance of Defendant Cook County State's Attorney's Rule 68 Offer of Judgment.

2. Plaintiff's Notice of Acceptance included four paragraphs (Paragraphs 2-5) which allege as a "well-established fact" that Defendants facilitated and covered up a pattern and practice of torture that led to Plaintiff's conviction, and that Defendants conspired with others in this cover up. Paragraphs 2-5 serve no purpose in this filing and their inclusion is particularly disconcerting in light of the fact that Plaintiff accepted Defendants' settlement offer on November 13, 2018, and

agreed to dismiss all claims against Defendants, with Defendants expressly denying liability for the allegations asserted by plaintiff.

3. A district court has “considerable discretion in striking any redundant, immaterial, impertinent or scandalous matter.” *VitalGo, Inc. v. Kreg Therapeutics, Inc.*, No. 16-CV-5577, 2017 WL 6569633, at *2 (N.D. Ill. Dec. 21, 2017) (quoting *Delta Consulting Grp., Inc. v. R. Randle Constr., Inc.*, 554 F.3d 1133, 1141 (7th Cir. 2009)).

4. Plaintiff’s superfluous and self-serving language in Paragraphs 2-5 of the Notice of Acceptance should be stricken. A Notice of Acceptance of a Rule 68 Offer of Judgment should simply state: (i) the parties involved; (ii) amount of the offer; and (iii) the plaintiff’s acceptance of that amount. Plaintiff accomplishes all of this in Paragraphs 1 and 7 of the Notice of Acceptance. Yet, Plaintiff added the unnecessary language in Paragraphs 2-5 directly attacking Defendants by relying on unproven allegations from newspaper articles.

5. Plaintiff should not be allowed to use this filing to cast aspersions against Defendants, who had no role in this Offer of Judgment, and have previously been dismissed from this litigation.

6. When Plaintiff settled and released his claims against Defendants, the parties conferred with the Court regarding the express terms of settlement as agreed by the parties, which were placed on the record during the hearing before Judge St. Eve on November 13, 2018. Two weeks later, Plaintiff filed the Notice of Acceptance containing language that contradicts the terms of settlement negotiated and agreed to by the parties.

7. Plaintiff’s counsel’s attempt to backdoor these gratuitous and extraneous allegations against Defendants at this stage of the litigation is inappropriate and should not be tolerated by this Court. Paragraphs 2-5 of Plaintiff’s Notice of Acceptance should be stricken.

WHEREFORE, Defendants respectfully request that the Court issue an Order striking Paragraphs 2-5 of Plaintiff's Notice of Acceptance of Cook County's Offer of Judgment and awarding the fees incurred in briefing this motion [Dkt. 247], and such other relief as this Court deems just and proper.

Dated: November 29, 2018

Respectfully submitted,

/s/ John F. Gibbons

John F. Gibbons
Elizabeth S. Ralph
Kyle L. Flynn
Greenberg Traurig, LLP
77 West Wacker Drive, Suite 3100
Chicago, IL 60601
312.456.8400 (telephone)
Attorneys for Defendant City of Chicago

/s/Andrew M. Hale

Andrew M. Hale
Brian Stefanich
Hale Law LLC
53 West Jackson Street, Suite 330
Chicago, IL 60604
312.341.9646
Attorneys for Defendant Officers

/s/ Terrence M. Burns

Terrence M. Burns
Paul A. Michalik
Daniel M. Noland
Reiter Burns, LLP
311 S Wacker Drive
Chicago, IL 60606
312.982.0090
Attorneys for Municipal Official Defendants

CERTIFICATE OF SERVICE

I, Paul A. Michalik, certify that on November 29, 2018, a true and correct copy of the **City Defendants' Joint Motion to Strike Paragraphs 2-5 of Plaintiff's Notice of Acceptance** was served electronically through the Northern District of Illinois CM/ECF electronic filing on all counsel of record.

/s/ Paul A. Michalik